IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5097 OF 2005

Kundalik Pandharinath Palsande ... Petitioner
(Ori.Defendant)

V/s

Laxman Anna Kachare
(since deceased)
1(A) Smt. Malan Laxman Kachare & ors. ... Respondents
(Ori. heirs and legal representatives of deceased ori. plaintiff)

Mrs. A.S. Malvankar for the petitioner.

Mr. M.V. Limaye for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 21ST FEBRUARY, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner has preferred this petition against the judgment and order passed by the Ad-hoc Addl. District Judge, Satara, dismissing the appeal by order dated 22.3.2004 and confirming the decree for compensation passed by the Trial Court on the ground of

Sec. 13(1)(g) of the Bombay Rent Act holding that the respondent landlords require the suit premises reasonably and bonafide for their personal use and occupation. It was also held that the respondent landlords would suffer greater hardship if the decree is refused to be passed.

3. The respondent landlords filed the suit for possession of the suit property on various grounds including the ground contemplated under Sec. 31(1)(g) of the Bombay Rent Act. According to the defendant, he was residing in a rented premises at Wai, a town near Satara, whereas the suit premises owned by him is located at Satara and he wants to live and settle in his own house at Satara in his old days.

4. It was the case sought to be made out by the respondent landlords that the petitioner tenant was a Government servant and was serving out of Satara and he had purchased his own plot and was having alternative premises suitable for his residence and on such and other grounds the suit was sought to be decreed.

5. The petitioner tenant challenged the suit inter-alia submitting that the allegations were false and the

plaintiffs had no requirement of the suit premises and sought dismissal of the suit.

6. The Trial Judge adjudicated the dispute on merits holding that the plaintiffs had proved that their requirement was bonafide and reasonable and on that ground as well as on the point of hardship the suit came to be decreed though it was dismissed on other grounds taken up by the plaintiffs in the suit.

7. The appeal was carried to the District Judge, Satara. The learned lower appellate Court Judge concurred with the findings recorded by the learned Trial Judge and dismissed the appeal. Hence the present petition.

8. At the outset, it may be noted that the evidence on record is sufficient to show that the plaintiff Smt. Malan Laxman Kachare who is widow of original plaintiff Laxman Anna Kachare, resided at village Sakewadi near Wai in a rented premises. They were having their own properties but those were in possession of tenants for which purpose they have filed the suit but those were pending. The evidence further show that the suit premises is a ancestral property of the plaintiffs and

they are willing to reside in the said house in Satara. It has also come on record that the tenant has instituted the suit against the plaintiff Laxman, who has no house belonging to him at all. On this back ground both the Courts below have come to the conclusion that the plaintiff has proved his bonafide requirement of the suit premises taking into account the old age of the plaintiff holding that he has every right to claim residence of his own desire in his own house. It has also come in evidence that the plaintiff in fact owned immovable property at Wai as well as Phaltan but all those properties were tenanted property and he was not in position to acquire all these properties for his residence.

After death of respondent Laxman i.e. husband of present respondent Malan, there is no male issue in the family and it has become difficult to said Malan to run the business at Wai for which she want to shift to Satara. On the other hand, the evidence on record is also sufficient to show that the petitioner is in Government service and is having transferable job and is entitled to suitable residential quarter who has not made any efforts to obtain suitable residence but has chosen to keep the suit premises occupied. Under the

circumstances, both the Courts below have come to the conclusion that more hardship would be caused to the plaintiffs if the decree is not granted in favour of the plaintiffs than the defendant who would suffer lesser hardship if the decree is passed against him.

9. Both the Courts below have recorded the reasoned orders supporting the claim of the plaintiffs which are seen to be based on the available evidence and, therefore, it would brook no interference as those are found to be just, legal and proper.

10. The learned counsel for the petitioner tried to argue that the present respondents have acquired suitable accommodation pending the petition. In order to substantiate the said claim, my attention was drawn to zerox copy of the document which was a development agreement between the third person and present respondent, however, it nowhere shows that the respondent has acquired suitable alternative accommodation fulfilling her need for the residence at Satara. Under the circumstances, such plea at this belated stage based on development agreement cannot be taken into account.

11. In view of these aspects, I hold that the petition is devoid of any merits and, as such, stands dismissed with no order as to costs. Secondly, the Civil Application No.728 of 2004 also stands dismissed with no order as to costs.

12. At this stage, the learned counsel for the petitioner sought stay of this order. In view of the facts and circumstances, the plea for stay stands rejected.

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